

**RESOLUTION NO. 2016-10**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH YAVAPAI COUNTY TO PROVIDE PROJECT MANAGEMENT FOR THE DRY CREEK ROAD OVERLAY PROJECT; PROVIDING AUTHORIZATION FOR THE MAYOR TO EXECUTE SAID AGREEMENT.**

WHEREAS, the City of Sedona ("City") and Yavapai County, a political subdivision of the State ("County"), have prepared an intergovernmental agreement for the County to provide project management for the Dry Creek Road Overlay Project; and

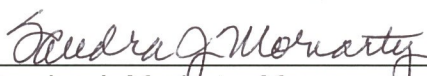
WHEREAS, the City and County are mutually agreeable to entering into an agreement and desire to partner in the repaving of 3.43 miles of Boynton Pass and Dry Creek Roads; and

WHEREAS; the City has reviewed the terms of the intergovernmental agreement and determined that it is in the proper form required by A.R.S. § 11-951 and 11-952.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA THAT:

The City of Sedona, through its Mayor and Council, hereby approves the Intergovernmental Agreement with Yavapai County to provide project management for the Dry Creek Road Overlay Project, and the Mayor is authorized to execute said Agreement on behalf of the City.

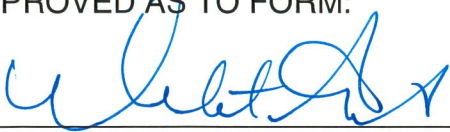
PASSED AND ADOPTED by the Mayor and Council of the City of Sedona, Arizona, this 22<sup>nd</sup> day of March, 2016.

  
Sandra J. Moriarty, Mayor

ATTEST:

  
Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:

  
Robert L. Pickels, Jr., City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF SEDONA AND YAVAPAI COUNTY FOR  
A JOINT PROJECT FOR BOYNTON PASS AND DRY CREEK ROADS**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the CITY OF SEDONA, a municipal corporation of Arizona (hereafter "City"), and YAVAPAI COUNTY, a political subdivision of the State of Arizona (hereafter the "County"), subject to the terms, conditions and recitals set forth as follows:

WHEREAS, the City and the County are collectively referred to as "Parties" in this Agreement, and

WHEREAS, the STATE of ARIZONA ("State") and THE NORTHERN ARIZONA COUNCIL OF GOVERNMENTS ("NACOG") are included herein by reference but are not Parties to this Agreement; and

WHEREAS, the City and County desire to improve and repave Boynton Pass and Dry Creek Roads and

WHEREAS, Boynton Pass and Dry Creek Roads exist within City and County jurisdictions and serve the interests of each of the parties; and

WHEREAS, the City and County are mutually agreeable to entering into an agreement and desire to partner in the repaving of 3.43 miles of Boynton Pass and Dry Creek Roads as depicted on attached Exhibits "A" and "B" known as the "Project" and

WHEREAS, the parties desire to continue their past cooperation in matters of mutual interest affecting both City and County residents; and

WHEREAS, ARS §§ 11-951 and 11-952 authorize "public agencies" such as the City and the County to enter into such intergovernmental agreements;

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the other, it is hereby agreed as follows:

**SECTION 1. Engineering Plans** The Parties hereby agree to jointly develop a set of engineering plans for the design of the Project specified in this Agreement.

**SECTION 2.           The County will:**

1. Award and administer contracts for design, right-of-way clearance and environmental clearance of the repaving of Boynton Pass and Dry Creek Roads.
2. Coordinate all design efforts with NACOG and the Arizona Department of Transportation with regard to the use of the Federal Surface Transportation Program (STP) funds.
3. Be responsible, through a separate agreement between the County and ADOT, for all ADOT design review fees currently estimated to be \$30,000.
4. Contribute to the project the County share of Eastern Yavapai NACOG funds for fiscal years 2016 and 2017 as identified in the NACOG Transportation Improvement Plan (TIP), including any matching funds for the construction costs.
5. Contribute its share of remaining non-federal funds for its proportionate share (70%) of project design costs currently estimated to be \$132,020.
6. Invoice the City monthly for its proportionate share (30%) of project design costs currently estimated to be \$56,580.
7. Upon project completion own and maintain the County portion of the project in accordance with County standards.

**SECTION 3.           The City will:**

1. Participate in the process for procurement of engineering services by the County.
2. Participate in project design meetings, review project documents, and provide review comments in completion of the design.
3. Participate in construction meetings, review construction documents, and provide comments for the completion of the construction.
4. Contribute to the project the City share of Eastern Yavapai NACOG funds for fiscal years 2018 as identified in the NACOG Transportation Improvement Plan (TIP), including any matching funds for the construction costs.
5. Reimburse the County for the City portion (30%) of the project design costs based on monthly invoices from the design engineer currently estimated to be \$56,580.
6. Reimburse the County for 50% of the ADOT design review fee currently estimated to be \$15,000.
7. Upon project completion, own and maintain the City portion of the project in accordance with City standards.

**SECTION 4: NOTICES.** Notices relating to this Intergovernmental Agreement shall be deemed to have been duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, addressed as follows:

Sedona: City of Sedona  
c/o J. Andy Dickey, PE  
102 Roadrunner Drive  
Sedona, Arizona 86336

Yavapai County: Yavapai County Public Works  
c/o Byron Jaspers, PE  
1100 Commerce Drive  
Prescott, Arizona 86305

**SECTION 5: CONFLICT OF INTEREST.** Pursuant to A.R.S. Section 38-511, either party may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the County is, at any time while the Agreement or an extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. In the event of the foregoing, the County further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the County from any other party to the Agreement arising as a result of this Agreement.

**SECTION 6: INDEMNIFY AND HOLD HARMLESS.** The City of Sedona hereby agrees to indemnify and hold harmless the County, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the City of Sedona's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. The City further releases and discharges the County, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of the County, from any and all claims which the City has or may have against the County, its agents or employees, arising out of or in any way connected with The City's activities as set forth in this Agreement.

The County (hereinafter "County") hereby agrees to indemnify and hold harmless the City, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of County's participation pursuant to this Agreement, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the undersigned or its agents. The County further releases and discharges the City, its departments and divisions, its agents and employees, and any and all persons legally responsible for the acts or omissions of The City, from any and all claims which County has or may have against the City, its agents or employees, arising out of or in any way connected with the County's activities as set forth in this Agreement.

**SECTION 7: IMMIGRATION LAW COMPLIANCE.** Both parties hereby warrant that they will at all times during the term of this IGA comply with all federal immigration laws applicable to their employment of their employees, and with the requirements of A.R.S. §§ 23-214 and 41-4401 (together the “State and Federal Immigration Laws”). A breach of the foregoing warranty shall be deemed a material breach of the IGA, and the parties shall have the right to terminate this IGA for such a breach, in addition to any other applicable remedies. The parties retain the legal right to inspect the papers of each contractor, subcontractor or employee of either who performs work pursuant to this IGA to verify performance of the foregoing warranty of compliance with the State and Federal Immigration Laws.

**SECTION 8: WAIVER.** No oral order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement, and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or modification thereof in writing. No evidence of modification or waiver other than evidence of any such written notice, waiver, or modifications shall be introduced in any proceeding.

**SECTION 9: WAIVER OF JURY TRIAL AND ATTORNEYS’ FEES.** The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorney’s fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute, or state or federal court rule, or state or federal common law.

**SECTION 10: RESULT OF NEGOTIATIONS.** This Agreement is the result of negotiations by and between the parties. The Agreement has been reviewed by Yavapai County Attorney and by the Sedona City Attorney. Therefore, any ambiguity in this agreement is not to be construed against either party.

**SECTION 11: INSURANCE.**

**A.** The City of Sedona shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold the County harmless and indemnify the County from any and all liability which may result from the negligent acts or omissions of the City’s employees or agents.

**B.** The County shall carry sufficient insurance to cover the activities outlined in this Agreement, and shall hold the City harmless and indemnify the City from any and all liability which may result from the negligent acts or omissions of the County’s employees or agents.

**SECTION 12: DESIGNATED REPRESENTATIVES.** Both parties hereto agree that they will designate at all times at least one staff member to be a liaison of that agency in carrying out the provisions of this agreement, for purposes of notice, scheduling, etc. Initially, the designated staff persons are:

For the City:

J. Andy Dickey, PE  
Assistant Community Development Director / City Engineer  
102 Roadrunner Drive  
Sedona AZ 86336  
Phone: (928) 204-7111

For the County:

Byron Jaspers, P.E.  
County Engineer  
1100 Commerce Drive  
Prescott, AZ 86305  
(928) 771-3183

**SECTION 13: TERM OF AGREEMENT.** This Agreement shall remain in full force and effect until October 31, 2018 or until such time that the "Project" is complete and approved by ADOT, whichever occurs first. Either party may extend this contract should the need arise or if the federal funding is moved to a later year. Either party may terminate this Agreement with one year's written notice to the other. Should the NACOG STP construction funds not be available either Party may terminate this Agreement

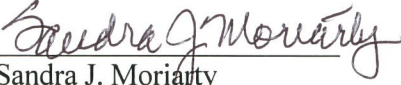
**SECTION 14: ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties with respect to the subject matters hereof, and it may be amended, modified, or waived only by an instrument in writing signed by both parties.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the aforementioned date.

**CITY OF SEDONA**


**YAVAPAI COUNTY**

  
Sandra J. Moriarty  
Mayor

\_\_\_\_\_  
Jack R. Smith  
Chairman of the Board, Yavapai County

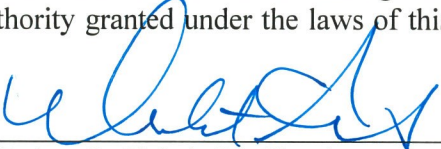
ATTEST:

ATTEST:

  
Susan Irvine  
City Clerk

\_\_\_\_\_  
Name:  
Clerk, Yavapai County Board of Supervisors

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Sedona, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Sedona.

  
\_\_\_\_\_  
Robert L. Pickels Jr., City Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for Yavapai County, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to Yavapai County.

\_\_\_\_\_  
Jack Fields, Deputy County Attorney,  
Assistant County Administrator